

Remarks/Arguments

Claims 44-53 are pending in the application. Claims 1-43 were previously cancelled. Claims 44-47, 50, and 51 are currently amended. Claims 48 and 53 are currently canceled. Claim 54 is new.

Applicant amends claims 44-47, 50 and 51 to clarify the subject matter therein claimed. Applicant submits that these amendments add no new matter. Support for the amendment of claims 44-47, 50, and 51 may be found, for example, in the specification in paragraphs [0017], [0037], [0038], [0042]-[0044] and in Figures 6-15. Further support may also be found, for example, in amendments to the specification set forth in the preliminary amendment filed on February 27, 2007. In particular in a new paragraph that was added after line 11 on page 13 of the originally filed application.

Applicant amends by introducing new claim 54. No new matter is added. Support for new claim 54 may be found, for example, in the specification in paragraphs [0017], and [0037], [0038], [0042]-[0044] and in Figures 6-15. Further support may also be found, for example, in amendments to the specification set forth in the preliminary amendment filed on February 27, 2007. In particular in a new paragraph that was added after line 11 on page 13 of the originally filed application.

Applicant thanks Examiner Kim for the telephone interview of April 16, 2009, wherein topics along the following lines were discussed. The scope of claim 44 was discussed with respect to the restriction requirement, 112 rejections, and Chapman reference. No agreement was reached, but there were suggestions on how the rejections could be overcome. In view of the discussion, Applicant is submitting amended claims, without prejudice.

Applicant notes that the claim set, as amended, now includes two independent claims (i.e., Claims 44 and 54) and has 54 claims total. Claims 48 and 53 are cancelled and claim 54 is

newly added. Therefore, no fees are due. However, if needed, any fees due are authorized to be charged as set forth below.

Applicant further notes that this Amendment and Response is being filed within the three month shortened statutory period and, as such, no extension of time is required. However, if any such extension of time is determined to be required, this shall serve as a request for any such required extension, pursuant to 37 CFR 1.136.

In view of the claims as set forth above and the remarks below, Applicant respectfully submits that all claims patentably distinguish over the cited references and are in condition for allowance.

Drawings: The Action objects to the drawings. Applicant submits that the cancelation of claim 48 and the current amendments of claim 51 make the objections moot.

Claim Objections: The Action objects to claim 44. Applicant submits that the current amendments of claim 44 make the objection moot.

Claim Rejections – 35 USC § 112:

The Action rejects claim 48 under 35 USC § 112, first paragraph, as not providing enablement to a person skilled in the art to make and/or use the invention commensurate in scope with the claim. Applicant submits that the current cancellation of claim 48 makes the rejection moot.

The Action further rejects claims 44-53 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant submits that the current amendments of claim 44 make the rejections moot. Furthermore, Applicant submits that current claim 44 is directed to

the elected invention of Group IV (wheel assembly), Species A (Fig. 11), as elected in the reply filed on February 5, 2008. As set forth in MPEP section 2111:

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

The preamble of claim 44 is directed to a wheel assembly and the body of the claim recites that the wheel assembly includes a support frame and a tire assembly. This definition is set forth in the specification:

"According to the inventive subject matter, a wheel assembly includes a support frame and a tire assembly. A tire assembly is defined as having one or more wheels and an associated axle."

See the new paragraph that was inserted by a preliminary amendment filed on February 27, 2007, and which was supported in the Summary on page 5 lines 15-21, page 6 lines 1-2 and 20-21, and page 7 lines 1-6; and in the Detailed Description on page 13 lines 12-17, page 14 lines 18-21, and page 15 lines 17-21 of the originally filed application. Additional support may be found in Figure 11.

Thus, claim 44 is directed to a wheel assembly, and a tire assembly is defined as being part of the wheel assembly. Therefore a claim to a wheel assembly that recites a tire assembly cannot contradict a previous restriction requirement in which a wheel assembly was elected.

Applicant further submits that the current amendments of claims 44-47 and 51 make the rejections moot. Claims 49, 50, and 52 depend directly on independent claim 44, and are patentable at least for the same reason.

Claim Rejections – 35 USC § 102:

The Action rejects claims 44, 48, 49, 50, and 53 under 35 USC 102(b) as anticipated by Chapman (US 6,131,833). Applicant respectfully traverses the rejection.

In addition to the arguments set forth in the previous response, Applicant submits that Chapman fails to disclose each and every limitation as currently claimed. The Action considers the claimed axle assembly to be the equivalent of axle assembly 66, which drives drive pulley 64, and endless belt 50, which drives wheel assemblies 48. In Chapman, however, axle 66 drives drive pulley 64. Pulley 64 does not extend below the second ends of the opposite arms. (See Fig. 8) Wheel assemblies 48 extend below the arms and these wheel assemblies are supported by a second axle. Thus, axle 66 cannot be considered the equivalent of the claimed axle that is mounted on the opposite arms at a location so that the tire of the tire assembly extends below the second ends of the opposite arms and the tire assembly contacts and elevates the support frame off the ground. Furthermore, axle 66 supports a track, not the recited tire assembly. Moreover, the Action does not give any consideration and weight to the language that it is a tire of the tire assembly that extends below the opposite arms and elevates the support frame off the ground. Chapman does not disclose a tire assembly or a tire, only a track system.

In view of the foregoing remarks, claims 44, 48, 49, 50, and 53 patentably distinguish over the cited art. Applicant submits that the Action is traversed in view of the current amendments and arguments above.

In view of the foregoing, Applicant requests that the Action's rejections be reconsidered and withdrawn.

Nothing herein should be deemed as a disclaimer or surrender of any rights, an acquiescence in any rejection, or a waiver of any arguments that might have been raised but were not raised herein or otherwise in the prosecution of this application. Applicant reserves all

rights and subject matter with respect to claims being or to be pursued in this or a related application.

CONCLUSION

Applicant submits that in view of the foregoing remarks and/or amendments, the application is in condition for allowance, and favorable action is respectfully requested.

The Commissioner is hereby authorized to charge any fees, including extension fees, or to charge any additional fees or underpayments, or to credit any overpayments, to the Credit Card account referenced and authorized via the EFS Web (Electronic Filing System). As an alternative, in case the Credit Card cannot be processed, the Commissioner is hereby authorized to charge any fees, additional fees, or underpayments, or to credit any overpayments, to Deposit Account No. 50-1001.

Respectfully submitted,



Date: April 28, 2009

Hilde Coeckx, Reg. No. 57,506
P. O. Box 2200
Hillsboro, OR 97123
Telephone: (503) 844-9009
Facsimile: (503) 296-2172
email: mail@ganzlaw.com